IN THE

Supreme Court of the United States

——— TERM, 1979

No. 78-1100

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Plaintiff-Respondent,

vs.

THORWALD BROWN, a/k/a TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Defendant-Petitioner.

On Appeal From the Supreme Court of Minnesota

PLAINTIFF-RESPONDENT'S BRIEF

Lindquist and Vennum
By Norman L. Newhall and
Maclay R. Hyde
4200 IDS Center
Minneapolis, Minnesota 55402
(612) 335-6651
Wright, Roe & Schmidt
By Steven B. Schmidt
2124 IDS Center
Minneapolis, Minnesota 55402
(612) 333-3343
Attorneys for Plaintiff-Respondent

1979—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

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QUESTION PRESENTED

This is a civil action brought in Minnesota under Minnesota's Civil Damage Act, Minnesota Statutes, Section 340.95, and common law negligence, arising from a sale of alcoholic beverages in Wisconsin which subsequently caused or contributed to personal injury to Plaintiff in Minnesota. The question presented for review is whether the Defendant-Petitioner tavern owner, whose tavern (1) is located on the Wisconsin side of the Minnesota-Wisconsin border, (2) is directly connected to the large urban

area of Minneapolis-St. Paul by Interstate 94 and is within 15 miles of that urban area, (3) directly benefits from the monopoly on the late evening sales of alcohol beverages once the Minnesota liquor establishments close due to the difference between Minnesota and Wisconsin laws regulating the hours of business for off-sale liquor establishments and benefits from the historical lower legal drinking age in Wisconsin, and (4) committed a foreseeable tort in Minnesota by making an illegal sale of alcoholic beverages to a Minnesota minor who, while intoxicated, caused an automobile accident in Minnesota resulting in injury to a Minnesota resident, had sufficient minimum contacts for the Minnesota Court to exercise jurisdiction over him consistent with the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional basis for this Petition is the United States Constitution, Amendment Fourteen, Section One, which provides as follows:

> "All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE FACTS

On the evening of October 23, 1974, plaintiff Lisa Blamey, a 15 year old, attended a beer party in the Twin

Cities area given by Patrick Michael (Mike) Martin, a 17 year old. The party broke up at about 11:00 p m. after the beer supply had been exhausted. A group from the party, including plaintiff, got into Martin's sister's car and Martin decided that they should go to Wisconsin since liquor stores in the Twin Cities had closed by that time. He said he knew of a place in Wisconsin where beer could be obtained at that hour.

Accompanied by the plaintiff, Martin drove the car to Hudson, Wisconsin where he purchased two 12-packs of strong beer at the Overshoe Club at approximately 1:00 a.m. At about 4:00 a.m., the car was involved in a one car accident in Minnesota in which plaintiff was seriously injured. At the time of the accident, plaintiff, Martin and all other occupants of the automobile driven by Martin were residents of Minnesota.

The Overshoe Club, also known as Ted Brown's Liquors, sold intoxicating liquor and fermented malt beverages both on and off-sale. The bar is located just off Interstate 94, within 15 miles of the Twin Cities area and is one of the first liquor establishments one reaches after exiting from the Interstate. It is located on the main street of Hudson, Wisconsin. Hudson is located on the Minnesota-Wisconsin border and the Twin Cities and Hudson are connected by the Interstate Highway.

ARGUMENT

THE CONTACTS BETWEEN DEFENDANT AND FORUM STATE SATISFY THE TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

The Minnesota Supreme Court has specifically stated that enacting the long-arm statutes, the legislature intended "to extend the extraterritorial jurisdiction of [the State's] courts to the maximum limit consistent with constitutional limitations". *Hunt vs. Nevada State Bank,* 285 Minn. 77, 172 N.W. 2d 292 (1969). Accordingly, the federal courts have recognized that both M.S.A. Section 303.13 and Section 543.19 are to read expansively. See e.g., *B & J Manufacturing Company vs. Solar Industries, Inc.,* 483 F. 2d 594, 597 (8th Cir. 1973); *Williams vs. Connolly,* 2207 F. Supp. 539, 542 (D. Minn. 1964).

In determining the constitutionality of allowing jurisdiction over non-residents under state "long-arm" statutes the Supreme Court of the United States has focused on three primary factors: namely, the quantity of the contacts the defendant has with the forum state; the nature and quality of those contacts; and the source and connection of the cause of action with those contacts. Two other factors, the interest of the forum state in providing a forum and the convenience of the parties, are also considered. *Aftanese vs. Economy Bailer Co.,* 343 F. 2d 187 (8th Cir. 1965).

As to the first and second criteria, the quantity, and the nature and the quality of contacts, petitioner's establishment is one of the first off-sale liquor stores one comes to when driving from Interstate 94 down the main street of Hudson, Wisconsin, which in turn is the first Wisconsin town across the Minnesota border on Interstate 94

from St. Paul and Minneapolis. Also, Minnesota residents desirous of buying beer late at night had to go to Wisconsin to purchase it because of the difference between Minnesota and Wisconsin off-sale liquor laws. On October 23, 1973, Minnesota law required off-sale liquor stores to close at 8:00 p.m. while the corresponding Wisconsin law allowed off-sale establishments to remain open until 2:00 o'clock a.m. Therefore, petitioner's proximity to the state border, an Interstate Highway connecting the large urban area of Minneapolis-St. Paul and Wisconsin, and the "monopoly" Wisconsin had on late night beer sales were bound to attract Minnesota residents to Wisconsin. The past experience of Wisconsin bars opening their business to Minnesota minors when the drinking age in Wisconsin was lower than in Minnesota was certainly a purposeful attempt to attract Minnesota residents to purchase liquor.[1] While we cannot be certain of the quantity of such contacts the petitioner may have had with Minnesota residents, we can reasonably assume that petitioner had numerous contacts with Minnesota residents other than the single contact that precipitated this lawsuit. The consequences of an accident and injury to someone such as the respondent in this case was certainly foreseeable.

The next factor for consideration is the source and connection of the cause of action with the defendant's con-

[1]It is true that on October 23, 1974, the date of the accident, Minnesota and Wisconsin both had legal drinking ages of 18. However, Minnesota did not lower its liquor age from 21 to 18 until June 1, 1973, while Wisconsin's had been 18 (for beer) for decades. Minnesota raised its drinking age to 19 effective September 1, 1976, while Wisconsin's remains at 18, so that age difference is again present today. Minnesota Statutes 340.035, Subd. 1, Minnesota Statutes 340.73, Subd. 1, Minnesota Statutes 340.14(1)(a) and Minnesota Statutes 645.45(3) and Wisconsin Statutes Section 66.054(9)(b), Wisconsin Statutes 176.30(1).

tacts with the forum state. Defendant operates an off-sale liquor establishment less than one mile from the Wisconsin-Minnesota border. In *Anderson vs. Luitjens,* — Minn. —, 247 N.W. 2d 913 (1976) the Minnesota Supreme Court ruled that it did have jurisdiction under M.S.A. Section 543.19 Subd. 1(c) over an Iowa liquor establishment which sold intoxicating liquors to a Minnesota minor who returned to Minnesota and, because of his intoxication, had an accident in Minnesota causing injury to a Minnesota plaintiff who was a passenger in the minor's vehicle. In *Anderson,* the Minnesota Supreme Court stated:

> "This difference [between the legal drinking age of 18 in Iowa and 21 in Minnesota] was bound to attract young Minnesotans to Iowa's nearby establishments. From this it appears that a sufficiently large percentage of [defendant's] patrons were Minnesota residents for it to have been reasonable for him to foresee both that serving alcoholic beverages to a minor or to a person already intoxicated might lead to consequences such as those which resulted here and that those consequences might occur in Minnesota," *id.* at 916.

As the Minnesota Supreme Court stated below in the present action:

> "While the parties to the present action agree that the drinking age in both Minnesota and Wisconsin was 18 at the time of the accident, the difference in the hours liquor establishments were allowed to remain open, previously discussed, was bound to attract Minnesota minors to Wisconsin. In fact, in the present case, Martin's knowledge of the situation was

> the initial reason the group of young people headed to Wisconsin to make their purchase," (Petitioner's brief Appendix p. A-11).

As can be seen, one of defendant's contacts with the State of Minnesota is the source of this cause of action. Therefore, this factor, the source and connection of the cause of action with the contacts, is clearly satisfied.

The interest of the state in providing a forum is the next factor of analysis. Plaintiff is a lifelong Minnesota resident who sustained serious injuries in Minnesota resulting in an accumulation of hospital and physician's bills with Minnesota creditors. Plainly Minnesota has a manifest interest in providing a forum for its residents when they are injured by torts committed within Minnesota.

The final standard, convenience of the parties, also points to allowing personal jurisdiction in Minnesota. Since petitioner now lives in Arizona it would not be convenient for any party to have the case in Wisconsin. Since respondent and most, or all, of the potential witnesses live in Minnesota, Minnesota is clearly preferable to Arizona as well as to Wisconsin in this regard.

Petitioner argues that the concept of "long-arm" jurisdiction over non-residents must be limited by the opinion of the Court in *Hanson vs. Denkla,* 357 U.S. 235 (1958). There the transaction at issue, the execution of a trust and the delivery of the trust corpus, occurred entirely outside the state asserting jurisdiction. In *Hanson* the Court gave weight to the fact that the cause of action was not one that arose out of an act done in the forum state, and observed, that, in that respect, it differed from *McGee vs. International Life Insurance Company,* 355 U.S. 220 (1957). In

contrast with *Hanson*, the Minnesota Supreme Court found that the defendant in this case committed a tort, which is the "transaction at issue" in this case, in Minnesota by applying the standard test for determining where a tort occurred of "whether damage from the alleged tortious conduct resulted in Minnesota". Petitioner has committed a tort in Minnesota, the nature of which was readily foreseeable. Petitioner also has ample other "minimum contacts" with the State of Minnesota and should be required to submit to the jurisdiction of Minnesota's Courts.

To construe the language of *Hanson* requiring that there be some act by which the defendant "purposefully" avails himself of the privilege of conducting activities within the forum state strictly would undermine the notion that the facts of each case must be examined to determine whether it is fair to exercise jurisdiction over the defendant; to make the requirement of purposeful activity within the state a necessary prerequisite to personal jurisdiction in all cases revitalizes the "implied consent" theory emasculated by *International Shoe Company vs. State of Washington,* 326 U.S. 310 (1945) and reverses the trend expanding state jurisdiction over non-residents; and to limit jurisdiction to defendants who "purposefully" conduct activities within the state is clearly erroneous in suits involving tortious or negligent conduct, such as this case, because it is unrealistic to say that the actors first considered the laws of the state in which such acts were committed. Surely, justice would not be served, especially in suits involving negligent or tortious conduct, by reading the due process clause of the Fourteenth Amendment as requiring more contacts or contacts of a different nature than those involved in the present suit.

In *Deveny vs. Rheem Manufacturing Company,* 319 F 2d 124, 127 (2d Cir. 1963), a suit brought against an out-of-state water heater manufacturer after one of its water heaters had exploded and injured plaintiff's daughter, the court stated, "the long-arm of State Courts is permitted to reach out-of-state defendants only in suits growing out of acts which have created contacts with the forum state, however limited or transient such contacts may be". Defendant's contacts with Minnesota were much more substantial than merely being "limited or transient". Defendant's off-sale liquor establishment was located in very close proximity to the Minnesota-Wisconsin border. The large urban area of Minneapolis-St. Paul was close by and directly connected to Hudson, Wisconsin by Interstate 94. Defendant's bar held a "monopoly" on late night beer sales due to the difference between Minnesota and Wisconsin state laws, and the tort committed by defendant was of a highly foreseeable nature. It comports with the traditional notions of fairplay and substantial justice that defendant be subject to the jurisdiction of Minnesota courts.

CONCLUSION

Plaintiff-Respondent urges the Court to deny the petition for a Writ of Certiorari in this case or in the alternative, affirm in all respects the Judgment and Decree of the Minnesota Supreme Court.

Respectfully submitted,

LINDQUIST AND VENNUM
By Norman L. Newhall and
Maclay R. Hyde
4200 IDS Center
Minneapolis, Minnesota 55402
(612) 335-6651
WRIGHT, ROE & SCHMIDT
By Steven B. Schmidt
Attorney for Plaintiff-Respondent
2124 IDS Center
Minneapolis, Minnesota 55402
(612) 333-3343